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10/587,825	02/02/2007	Erling Rytter	1101.154WOUS	1295

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EXAMINER	
NGUYEN, CAM N	
ART UNIT	PAPER NUMBER
1793	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/587,825	RYTTER ET AL.	
	Examiner	Art Unit	
	Cam N. Nguyen	1793	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05/01/09 (an election)*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-83* is/are pending in the application.

4a) Of the above claim(s) *1-37 and 51-83* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *38-50* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *originally filed* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *03/23/07*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Election/Restrictions

1. Applicant's election of Group II, claims 38-50, in the reply filed on 05/01/09 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election *without traverse* (MPEP § 818.03(a)).

2. Claims 1-37 & 51-83 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention(s), there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 05/01/09.

Specification

3. The examiner has not checked the specification to the extent necessary to determine the presence of **all** possible minor errors (grammatical, typographical, and idiomatic). Cooperation of the applicant(s) is requested in correcting any errors of which applicant(s) may become aware of in the specification, in the claims and in any further amendment(s) that applicant(s) may file.

Applicant(s) is also requested to complete the status of the copending applications referred to in the specification by their Attorney Docket Number or Application Serial Number, **if any**.

The status of the parent application(s) and/or any other application(s) cross-referenced to this application, **if any**, should be updated in a timely manner.

Claim Objections

4. Claims 39 & 44 are objected to because of the following informalities:

A. In claim 39, line 2, "optionally" should be recited -- , optionally, --.

B. In claim 44, "stabilised" and "stabilising" should be changed to --stabilized-- and --stabilizing--.

Appropriate correction is required.

Claim Rejections - 35 USC § 102(b)/103

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

A. **Claims 38-39, 41, 43, & 45-50** are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Singleton et al., hereinafter referred to as "***Singleton '132***", (US Pat. 6,262,132 B1).

Singleton '132 discloses a catalyst comprising a γ-alumina support, wherein said γ-alumina support has an internal structure which comprises primarily γ-alumina and includes a controlled amount of a titanium dopant, etc. (see col. 25, claim 1). The catalyst comprises cobalt

supported on said γ-alumina support in a selected amount in the range of from about 10 to about 70 parts by weight (pbw) per 100 pbw of said γ-alumina support (see col. 26, claim 12). The selected amount of said cobalt is about 30% by weight based on the total weight of said catalyst (see col. 26, claim 19). The catalyst is promoted with a selected amount of ruthenium (see col. 26, claim 20). The ruthenium is present in an amount in the range of from about 0.2 pbw to about 1.5 pbw per 100 pbw of said γ-alumina support (see col. 26, claim 22). See also entire reference for further details.

Product-by-Process limitations in the instant claim 38 have been noted. While the product of the reference is not made by the same process, the product disclosed is the same as being claimed. It has been held that the patentability of the product and its method of production are separately determined. Thus, even though the process limitations in the claim are not disregarded, they have no bearing on the patentability of the claimed product per se. See *In re Thorpe*, 227 USPQ 964 (Fed. Cir. 1985); *In re Brown*, 173 USPQ 688, 688 (CCPA 1977); *In re Fessman*, 180 USPQ 324, 326 (CCPA 1977). See also *MPEP 2113*.

Regarding claims 48-50, it is inherent that the disclosed catalyst would have the same properties, such as surface area, pore volume, and pore size as being claimed because the catalyst is the same.

B. **Claims 38 & 44-50** are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Arai et al., hereinafter referred to as "***Arai '661***", (US Pat. 4,988,661).

Arai '661 discloses a steam reforming catalyst for hydrocarbons having at least one of nickel oxide, cobalt oxide and a platinum group noble metal supported on a carrier, the carrier consisting essentially of aluminum oxide Al_2O_3, a metal oxide expressed by MeO and a forming additive, etc., wherein Me being at least on metal selected from the group consisting of calcium (Ca), barium (Ba) and strontium (Sr) (see col. 14- col. 15, claim 1). The catalyst comprises about 3-50 parts by weight of at least one of nickel oxide and cobalt oxide and about 0.03-3 parts by weight of at least one platinum group noble metal, supported on the carrier relative to 100 parts by weight of the carrier (see col. 15, claim 4). See also entire reference for further details.

Product-by-Process limitations in the instant claim 38 have been noted. While the product of the reference is not made by the same process, the product disclosed is the same as being claimed. It has been held that the patentability of the product and its method of production are separately determined. Thus, even though the process limitations in the claim are not disregarded, they have no bearing on the patentability of the claimed product per se. See *In re Thorpe*, 227 USPQ 964 (Fed. Cir. 1985); *In re Brown*, 173 USPQ 688, 688 (CCPA 1977); *In re Fessman*, 180 USPQ 324, 326 (CCPA 1977). See also *MPEP 2113*.

Regarding claims 48-50, it is inherent that the disclosed catalyst would have the same properties, such as surface area, pore volume, and pore size as being claimed because the catalyst is the same.

Claim Rejections - 35 USC § 102(e)/103

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 38-43 & 48-50 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hu et al., hereinafter referred to as "***Hu '844***", (US Pat. 7,452,844 B2).

Hu '844 discloses a catalyst comprising a catalyst particle, which comprises at least one metal and at least one promoter dispersed on a support to form said catalyst particle, said particle having a BET surface area of from about 100 m^2/g to about 250 m^2/g, and said metal and said promoter are dispersed on the support such that said catalyst has a metal oxide crystallite size of from about 40 A to about 200 A, etc. (see col. 15, claim 1). The particle comprises from about 5 wt% to about 60 wt% cobalt, and from about 0.0001 wt% to about 1 wt% of a first promoter, and from about 0.01 wt% to about 5 wt% of a second promoter (see col. 15, claim 2). The first promoter metal selected from a group including platinum and rhenium, and the second promoter

metal selected from a group including lanthanum, cerium etc. (see col. 15- col. 16, claim 4). The support is selected from a group including γ-alumina support (see col. 16, claims 8-9).

Product-by-Process limitations in the instant claim 38 have been noted. While the product of the reference is not made by the same process, the product disclosed is the same as being claimed. It has been held that the patentability of the product and its method of production are separately determined. Thus, even though the process limitations in the claim are not disregarded, they have no bearing on the patentability of the claimed product per se. See *In re Thorpe*, 227 USPQ 964 (Fed. Cir. 1985); *In re Brown*, 173 USPQ 688, 688 (CCPA 1977); *In re Fessman*, 180 USPQ 324, 326 (CCPA 1977). See also *MPEP 2113*.

Citations

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. All references are cited for related art. See PTO-892 Form prepared.

Conclusion

8. Claims 1-83 are pending. Claims 1-37 & 51-83 are withdrawn due to nonelected (distinct) invention(s). Claims 38-50 are rejected. No claims are allowed.

Contacts

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Primary Examiner CAM N. NGUYEN, whose telephone number

is 571-272-1357. The examiner can normally be reached on M-F, 9:00 AM - 6:30 PM, at alternative work site.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman, can be reached on 571-272-1358. The fax phone number for the organization where this application or proceeding is assigned is 571-272-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Cam N. Nguyen/

Primary Examiner

Art Unit: 1793

/C. N. N./

July 15, 2009